I have been referred to *In re Keet*, L.R. (1905) 2 K.B. 666 as an authority for the proposition that a debtor has paid in full when he has paid the creditors who have proved. The proposition is only contained in the judgment of one of the members of the Court of Appeal; it was not necessary for the decision and I do not think I can rely on it as it appears to me to be opposed to the whole scheme of the Ordinance. Nor am I prepared to make an Order for payment out to the Debtor of the $650 upon his giving security for repayment on the lines of the Order made *In re Robert Dennis*, L.R. (1895) 2 Q.B. 630. The Order in that case was clearly discretionary and possibly in excess of the express powers given by the Ordinance. In any case section 132 (4) is different to the corresponding English section in that it provides for unclaimed dividends ultimately finding their way into the general revenue of the Colony. In view of that provision I should not feel justified in making an Order which would in effect defeat the express provisions of the Ordinance.

Order Accordingly.

Solicitors for the Debtor—*Allen & Gledhill.*

[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.

March 6, 1935.

RE ALEXANDER MAX HENDROFF.

[SINGAPORE BANKRUPTCY SUMMARY CASE No. 138 of 1925]

Annulment of bankruptcy — balance of moneys in hands of Official Assignee.

In this bankruptcy the Official Assignee received from various sources funds sufficient to pay in full all creditors who had proved and to leave in the hands of the Official Assignee after payment of such debts and costs &c., the sum of $817-03. According to the debtor's Statement of affairs there was a number of creditors whose debts amounted to $828 who had not proved their debts. On the 6th September, 1927 an order was made annulling the adjudication order and rescinding the receiving order. The Official Assignee then attempted to trace the other creditors who had not proved their debts up to that time but after all attempts had been made there still remained in his hands the sum of $495.03. Upon the debtor applying to the Official Assignee for payment to him of this sum.

Held, that the debtor had no interest in the said sum of $495-03 and that it should be dealt with as provided by S. 132 (3) of Ordinance No. 44 (Bankruptcy)

Summons.

In this Bankruptcy the Official Assignee applied by Summons for directions as to payment of moneys in his hands. The facts sufficiently appear from the Judgment.

E. B. Williams, Official Assignee in person.

Debtor in person.

A. Williams Attorney General.

Cur. Ad. Vult.

TERRELL, J.—In this case the Receiving and Adjudication Orders were made on the 15th May, 1925. Of the 16 creditors mentioned in the statement of affairs only 6 proved. Their debts without interest to the date of the receiving order amounted to $1,285.63. As the result of payments by the debtor from salary and from his Provident Fund, the Official Assignee had in hand by June, 1929, the sum of $2,250. This was sufficient to pay in full the creditors who had proved and to leave in the hands of the Official Assignee, after payment of costs, etc., the sum of $817.03 towards satisfaction of the creditors who had not proved. These debts according to the statement of affairs amounted to $828.

On the 26th August, 1929, the bankrupt applied for annulment of the bankruptcy and on the 3rd September, 1929, filed an affidavit stating that he had paid to the Official Assignee a sufficient sum to pay in full all his credtors with interest. This statement was not strictly accurate, but on the 6th September, 1929, an order was made annulling the adjudication and rescinding the receiving order.

On the 3rd January, 1931, the Official Assignee applied for directions as to the $817.03 remaining in his hands, and on the 23rd January, 1931, the Court made an order that the Official Assignee should continue to hold such sum and endeavour to trace the creditors. As a result one more creditor proved his debt and was paid the sum of $271.00. There accordingly remained in the hands of the Official Assignee the sum of $495.03 and the debtor now claims payment of this sum to him.

The annulment was made under section 103 of the Ordinance and could only be made if the Court were satisfied that the debt had been paid in full. Under section 103 (4) the debts, if not in fact paid to the creditors, must be provided for by payment into Court. The order annulling the adjudication must have been made on the assumption that this had been done and I do not think that the fact that the money paid in was not in fact enough affects the question now before the Court.

I fully considered the various provisions of the Ordinance in my judgment in Bankruptcy No. 454 of 1929. *re Neo Chin Siew*, which has also been delivered today, and there is no necessity to go over the same ground. In that case the money provided for creditors who had not proved remained in the hands of the Official Assignee as trustee of a composition. I pointed out that the terms of the composition might have provided for creditors proving within a certain time and that on their failure to do so, the money should revert to the debtor, but that as there was no such provision the money belonged to the creditors

and that the debtor had no interest in it. These considerations apply even more strongly in the present case, as section 103 (4) provides that such moneys must be paid into Court for the benefit of creditors who cannot be found or cannot be identified and the sub-section admits of no qualification of their rights whatever.

In the present case the final dividend, a payment in full to the creditors who had proved, was paid in July, 1929. Within six months of that date the balance should have been, and no doubt was, paid into Court to the credit of the Bankruptcy Estates Account under the provisions of section 132 (1) of the Ordinance. More than five years have elapsed since that date and the money should have been transferred and been at the disposal of the Governor-in-Council under the provisions of section 103 (3). This has apparently not been done.

The directions of the Court are, therefore, that the debtor has no interest in the sum of $495.03 and that it should be dealt with as provided by section 132 (3) of the Ordinance.

Order Accordingly.

[ORIGINAL CIVIL JURISDICTION]

PRICHARD, J.

December 11, 1934.

IN THE MATTER OF THE TRUSTS OF THE WILL OF LOW GUAN SWI DECEASED. ESTATE & TRUST AGENCIES (1927) LTD: vs. MARIA AND OTHERS.

[MALACCA ORIGINATING SUMMONS No. 30 of 1934]

Will—construction—gift of income to widow of son of Chinese testator—position of secondary wife.

By his Will the Testator made a bequest of a proportion of the net income of certain property to his son Low Kay Whay during his life and after his death to his widow. At the time of the making of the Will, and at the time of the death of the Testator the said Low Kay Whay had only one wife, but he subsequently took a secondary wife. Both wives survived him.

Held, that both the secondary wife and the principal wife were entitled as widows of Low Kay Whay.

Originating Summons.

The Testator, Low Guan Swi made a Will dated the 13th May, 1895. He died on the 18th June, 1898 and the Will was proved by his widow the sole executrix and trustee. By the Will certain property described as the Reserved Trust Estate was given to the Testator's trustee to be held on certain trusts during the life of the longest liver of six named persons (sons and grandsons of the Testator) and for the further period of 21 years thereafter. The income of the Reserved Trust Estate was given to Chan Tew Neo, the Testator's widow for her life, and after her death the Testator directed that the rents, issues and profits of the Reserved Trust Estate should be dealt with in the following manner, that is to say:—

> "(a) One fourth part or share thereof shall be paid to my said son Low Kay Whay during his life and after his death to his widow for the maintenance and support of herself and any child or children of the said Low Kay Whay living at the time of his death and should the said Low Kay Whay die without issue I direct that the said part or share be paid to his said widow during her life and after her death the same shall lapse and form part of my said Reserved Trust Estate."

At the time of the making of the Testator's will and at the time of the Testator's death, the said Low Kay Whay had only one wife namely Chua Geok Koon. Subsequently to the death of the Testator, his son Low Kay Whay contracted a marriage with a secondary wife, Maria, in the the lifetime of Chua Geok Koon. Low Kay Whay had three children by Chua Geok Koon and three children by Maria, two sons and one daughter. Low Kay Whay died on the 7th December 1904. Chua Geok Koon died on the 12th May 1922. Maria is still alive.

In 1929 new trustees, namely, Estate & Trust Agencies (1927) Limited, were appointed in respect of the estate of Low Guan Swi deceased. Maria claimed to be entitled to the whole or a part of the one quarter of the net income of the Reserved Trust Estate given by the Testator under the clause in his Will quoted above. The legal personal representative of Chua Geok Koon also made a claim thereto. The claim of Maria was resisted by the representative of Chan Tew Neo (the widow of the Testator) who was also the general residuary legatee. These claims were notified to the Trustees, Estate & Trust Agencies (1927) Limited who thereupon took out an Originating Summons for construction of the Will of the Testator and for decision of the questions raised. The Summons came on for hearing in Malacca on the 24th day of September 1934 before Prichard, J.

John Laycock for Maria (1st Defendant). The general presumption is that a gift to the wife of A, if A has a wife living at the date of the Will, goes to that wife as a *persona designata* and to nobody else. But even if the word "wife" is used there may be indications in the Will that the Testator intends by the word "wife"—any wife; and the above presumption can be rebutted by the context of the Will. Here the word used is "widow" not "wife." As *nemo est haeres viventis*, so *nemo*